

UNITED STATES,
PLAINTIFF, and the

Civil Action Number:

GOLDEN TRIANGLE ENERGY
Defendant.

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (“Plaintiff” or “the United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has, simultaneously with lodging of this Consent Decree, filed a Complaint alleging that Defendant, Golden Triangle Energy (“Golden Triangle” or “Defendant”) commenced construction of a major emitting facility and major modifications of a major emitting facility in violation of the Prevention of Significant Deterioration (“PSD”) requirements at Part C of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7470-7492, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the “PSD Rules”);

WHEREAS, Plaintiff further alleged that Defendant commenced construction of an emitting facility or modified an emitting facility without first obtaining the appropriate preconstruction permits and installing the appropriate air pollution control equipment required by the PSD Rules and the Missouri State Implementation Plan (“SIP”) approved pursuant to 42 U.S.C. § 7410;

WHEREAS, Plaintiff further alleged that potential air emissions from the Defendant’s facility were underestimated;

WHEREAS, the State of Missouri, through the Missouri Department of Natural Resources (“MDNR” or “Plaintiff-Intervenor”), has, simultaneously with lodging of this Consent Decree, filed a Complaint in Intervention (“Complaint”), alleging that Golden Triangle was and is in violation of the Missouri SIP, by failing to obtain the appropriate pre-construction permits, by failing to accurately report emissions increases, and by failing to install appropriate pollution control technology, in violation of applicable state laws, including 10 C.S.R. 10-6.060

(Missouri's PSD regulations) and 10 C.S.R. 10-6.070 Missouri's New Source Performance Standards (NSPS).

WHEREAS, Golden Triangle was formed in November 17, 1999, under Missouri State law;

WHEREAS, the State of Missouri issued a construction permit to Golden Triangle in June 2001, and ethanol production began in February 2001;

WHEREAS, Golden Triangle has worked cooperatively with the EPA and MDNR regarding the alleged violations and voluntarily provided requested information without information requests under Section 114 of the Act, 42 U.S.C. § 7414;

WHEREAS, the Defendant does not admit the violations alleged in the Complaints;

WHEREAS, the United States and Plaintiff-Intervenor (collectively "Plaintiffs"), and the Defendant have agreed that settlement of this action is in the best interest of the parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, Plaintiffs and the Defendant consent to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaints, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Complaints state a claim upon which relief can be granted against the Defendant under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C. § 1355. This Court has jurisdiction of the subject matter herein and over the parties consenting

hereto pursuant to 28 U.S.C. § 1345 and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c).

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the Plaintiffs and upon the Defendant as well as the Defendant's officers, employees, agents, successors and assigns. In the event Defendant proposes to sell or transfer the ethanol plant subject to this Consent Decree before termination of the Consent Decree, it shall advise such proposed purchaser or successor-in-interest in writing of the existence of this Consent Decree, and shall send a copy of such written notification by certified mail, return receipt requested, to the EPA Regional Administrator for Region VII before such sale or transfer, if possible, but no later than the closing date of such sale or transfer. The Defendant shall provide a copy of the Consent Decree and the Control Technology Plan required in Paragraph 4 of this Consent Decree to the proposed purchaser or successor-in-interest. In the event the Defendant sells or otherwise assigns any of its right, title, or interest in the ethanol plant, prior to termination of the Consent Decree, the conveyance shall not release the Defendant from any obligation imposed by this Consent Decree unless the party to whom the right, title or interest has been transferred agrees in writing to fulfill the obligations of this Consent Decree.

III. FACTUAL BACKGROUND AND APPLICABLE DEFINITIONS

3. (a). Golden Triangle is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and the federal and state regulations promulgated pursuant to the Act.

(b). Golden Triangle owns and operates a plant in Craig, Missouri, for the manufacture of ethanol. Golden Triangle receives whole corn which is then milled, cooked, and

fermented. After fermentation, the raw product is distilled to produce ethanol. Distillation separates the liquid ethanol from the corn meal, which Golden Triangle may dry or sell as wet mash for animal feed. The Plaintiffs allege that in the course of these manufacturing activities significant quantities of particulate matter ("PM"), particulate matter at or below ten (10) microns ("PM₁₀"), carbon monoxide ("CO"), volatile organic compounds ("VOCs"), nitrogen oxides ("NOx"), sulfur dioxide ("SO₂") and other pollutants are generated, including hazardous air pollutants ("HAPs") listed under Section 112(b)(1), 42 U.S.C. § 7412(b)(1) of the Act. The primary sources of these emissions are the feed dryers, fermentation units, gas boilers, cooling cyclones, ethanol load-out systems, and the fugitive dust emissions from the facility operations, including roads.

(c). Plaintiffs allege that the Golden Triangle ethanol plant in Craig, Missouri, is a "major emitting facility," as defined by Section 169(1) of the Act, 42 U.S.C. § 7479(1), and the federal and state regulations promulgated pursuant to the Act.

(d). Definitions: Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Act, and the federal and state regulations promulgated pursuant to the Act.

IV. COMPLIANCE PROGRAM REQUIREMENT

A. INSTALLATION OF CONTROLS AND APPLICABLE EMISSION LIMITS

4. Golden Triangle shall implement a program of compliance at its ethanol distillation facility to attain the emission levels required under this Consent Decree for VOC,

PM, PM₁₀, CO and NOx. Golden Triangle shall implement a plan for the installation of air pollution control technology ("Control Technology Plan") capable of meeting the following emission level reductions for the identified units in subparagraphs (a) through (i). Golden Triangle's Control Technology Plan, which has been approved by Plaintiffs, is Attachment 1 to this Consent Decree:

- (a). DDGS Dryer: Ninety-five (95) percent reduction of VOC or emissions no higher than ten (10) parts per million ("PPM") of VOC, ninety (90) percent reduction of CO emissions or emissions no higher than one hundred (100) PPM of CO, and reduction of PM and PM₁₀ based on operation of pollution control technology specified in the approved Control Technology Plan and as established after initial performance testing pursuant to Paragraph 18 of this Consent Decree. A NOx emission factor shall be established after initial performance testing required by this Consent Decree. The emission factor will be used to determine compliance with the Group NOx cap set out in Paragraph 4(g) using the method specified in the approved Control Technology Plan.
- (b). Fermentation Units (including the Beer Well): Either ninety-five (95) percent reduction of VOC or emissions equal to or less than twenty (20) PPM of VOC.
- (c). Boiler: A NOx emission factor shall be established based on initial performance testing required by this Consent Decree. The emission factor will be used to determine compliance with the Group Nox cap set out in Paragraph 4(g) using the method specified in the approved Control Technology Plan.
- (d). Cooling Cyclone: VOC emission limit to be established based on data collected from initial performance testing pursuant to Paragraph 18 of this Consent Decree.
- (e). Ethanol Loadout: Truck loadout: Install a closed vent system to achieve ninety-five (95) percent reduction in VOCs and vent to an open flame flare for the destruction of captured VOC's. Railcars: All railcars shall be dedicated as ethanol only.
- (f). New Source Performance Standards (NSPS): Identify and implement applicable NSPS requirements codified at 40 C.F.R.

Part 60, which are: NSPS subpart Dc (Small Industrial Commercial-Institutional Steam Generating Units less than 29 MW (100 million MMBTU/hour)); NSPS subpart Kb (Volatile Organic Liquid Storage Vessels); and NSPS subpart VV (Synthetic Organic Chemicals Manufacturing Industry Leak Detection, Monitoring and Repair Requirements), collectively referred to as "Applicable NSPS Requirements." The following four (4) tanks are subject to subpart Kb: T801, T802, T803 and T804.

(g). Group NOx Cap: A Group NOx limit shall not exceed 20.24 tons per year ("TPY") NOx for the gas-fired boiler and DDGS dryer. Emission factors for each unit in this group shall be established during the initial performance test required by this Consent Decree based on actual fuel usage for all emission units in this group as described in the approved Control Technology Plan.

(h). Fugitive Dust Control PM: Chemical dust suppression as described in the approved Control Technology Plan shall be implemented to minimize fugitive dust emissions from facility operations.

(i). Additional Requirements for Hazardous Air Pollutants ("HAPS"): Beginning no later than one hundred eighty (180) days following the start-up of the last piece of control equipment required in the approved Control Technology Plan, Golden Triangle shall continually operate its facility so as not to exceed source-wide allowable emissions of 9.0 tons per year ("TPY") for any single HAP or 24.0 TPY for all HAPs based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven months, beginning no later than one hundred eighty (180) days following start-up of the last piece of control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on the schedule to meet applicable emission caps as set forth in the approved Control Technology Plan. If, based on emissions testing as set forth in the approved Control Technology Plan, additional control measures are required to meet the 9.0 or 24.0 TPY emission caps, such control measures shall be implemented and included in the permit application required under Paragraphs 6 and 7.

5. Golden Triangle shall implement the approved Control Technology Plan in accordance with the schedule set forth in that plan. Golden Triangle's approved Control Technology Plan is incorporated by reference herein and made directly enforceable by Plaintiffs under this Consent Decree.

B. PERMITTING AND MODIFICATIONS

6. By no later than one hundred eighty (180) days of lodging of the Consent Decree, Golden Triangle shall apply to MDNR for a federally-enforceable construction permit. Golden Triangle shall include in its application, and MDNR shall propose to incorporate, the emission limits, monitoring and recordkeeping requirements of the approved Control Technology Plan and this Consent Decree into any existing or new construction permit issued to the source as federally-enforceable Title I permit conditions and such emission limits, monitoring and recordkeeping requirements shall remain applicable to the source for the life of its operation or until changed through a permit amendment. To the extent that the terms of the construction permit issued by MDNR are consistent with the provisions of this Consent Decree, Golden Triangle agrees not to contest such terms. Requirements under this Consent Decree excluded under this Paragraph as Title I conditions are NSPS Subparts Dc, Kb, and VV, and the fugitive emission control program referenced in Paragraph 4(f). In addition, the Consent Decree shall be referenced in the permit as the legal basis for all applicable requirements created by the Consent Decree.

7. By no later than one hundred eighty (180) days following start-up of the last piece of control equipment required by this Consent Decree, Golden Triangle shall apply for modification to its federally enforceable construction permits to incorporate those emission

limits, monitoring parameters, and recordkeeping set forth in this Consent Decree that have not already been incorporated into the appropriate permits as required in Paragraph 6.

8. Future Modifications: For the effective period of the Consent Decree, Golden Triangle shall obtain a federally-enforceable construction permit prior to beginning construction or operation of any future modification that will result in a “significant net emission increase” as defined by 40 C.F.R. Part 52, but will not exceed the ninety-five (95) TPY allowable emission caps. The modifications required in Part IV Section A (“Installation of Controls and Applicable Emission Limits”) and the approved Control Technology Plan of this Consent Decree, and any modification that qualifies for an exemption under the Missouri Air Conservation Commission rules 10 C.S.R. 10-6.060(5) and 10 C.S.R. 10-6.061 are excluded from the requirements of this Paragraph. For purposes of determining whether a modification will result in a significant net emissions increase, Golden Triangle shall use results from its initial performance tests, as required by Paragraph 18, to determine the past actual emissions baseline.

9. If, as a result of any future modifications, prior to termination of the Consent Decree, the total limited potential emissions of VOCs, PM, PM₁₀, SO₂, NO_x and CO will exceed the ninety-five (95) TPY allowable emission caps, then Golden Triangle shall complete and submit for MDNR approval a source-wide PSD/NSR permit application that includes the approved Control Technology Plan requirements as set forth in this Consent Decree. To the extent that Golden Triangle demonstrates, through results of compliance tests or evidence of operating conditions, that the facility has operated below the ninety-five (95) TPY emission caps for twenty-four (24) months, the facility shall be treated as a synthetic minor for air permitting

requirements and permit requirements for future modifications will be governed by applicable state and federal regulations.

10. Following termination of the Consent Decree, Golden Triangle shall obtain necessary permits or permit amendments, as required under applicable state and federal regulations.

11. In determining whether a future modification will result in a significant net emissions increase, Golden Triangle cannot take credit for any emission reductions resulting from the implementation of the approved Control Technology Plan for netting purposes as defined by 40 C.F.R. § 52.21(b)(3). In addition, the emission reductions of PM, PM₁₀, NO_x, SO₂ and CO required under this Consent Decree and the applicable NSPS may not be used for any emissions offset, banking, selling or trading program. VOC emissions reductions up to ninety-eight (98) percent of the uncontrolled feed dryer emissions may not be used for any emissions offset, banking, selling or trading program.

C. EMISSION LIMITS

12. Unit Emission Limits for DDGS Dryer, Fermentation Units, Ethanol Truck Loadout: Golden Triangle shall install the air pollution control technology in accordance with the schedule contained in the approved Control Technology Plan capable of meeting the emission level reductions for the identified units in Paragraph 4. Beginning no later than one-hundred eighty (180) days following the start-up of each piece of control equipment required in its approved Control Technology Plan, Golden Triangle shall continually operate each unit in accordance with the operating parameters set forth in the approved Control Technology Plan.

13. Unit Emission Limit for Cooling Cyclone: By no later than ninety (90) days following the initial performance test of the cooling cyclone as required in Paragraphs 4(d) and

18, Golden Triangle shall propose VOC emission limits for the cooling cyclone based on the data collected from initial performance testing and other available pertinent information. Golden Triangle shall immediately comply with the proposed emission limit. The EPA and MDNR will use the data collected and other available pertinent information to establish limits for VOC emissions from the cooling cyclone. The EPA and MDNR shall provide written notice to Golden Triangle of the established limit and the established limit shall be incorporated into and enforceable under this Consent Decree. If the limit established by the EPA and MDNR is more stringent than the limit proposed by Golden Triangle, then Golden Triangle shall have sixty (60) days from the date of written notice to comply with the established limit. If Golden Triangle contests the limit established by EPA and MDNR, Golden Triangle shall have sixty (60) days to invoke the dispute resolution process pursuant to Part IX ("Dispute Resolution") and obtain a stay from the Court. Until a limit is established through Dispute Resolution, Golden Triangle shall comply with the emission limit proposed by it under this Paragraph.

14. Group NOx Cap. Following the initial performance test required in Paragraph 18, Golden Triangle shall establish unit specific NOx emission factors that it will use to calculate actual NOx emissions to demonstrate compliance with Paragraph 4(g). The method to determine compliance with the limit in Paragraph 4(g) is specified in the approved Control Technology Plan. Beginning no later than one hundred eighty (180) days following the date of the initial performance tests for the boiler and the DDGS dryer, Golden Triangle shall continually operate its facility so as not to exceed the group NOx emission cap of 20.40 TPY for NOx based on a 12-month rolling sum rolled monthly and recorded monthly according to the equation in the approved Control Technology Plan. For the first eleven (11) months, compliance with the 12-

month rolling sum will be determined based on the schedule set forth in the approved Control Technology Plan. This provision shall survive termination of this Consent Decree until the 20.24 TPY emission cap is amended by or incorporated into a federally enforceable permit for the facility.

15. PM and PM₁₀ Emission Limit for DDGS Dryer: By no later than forty-five (45) days following the initial performance test of the control equipment for the DDGS dryer as required in Paragraphs 4(a) and 18, Golden Triangle shall propose PM and PM₁₀ emission limits for the DDGS dryer based on the data collected from initial performance testing and other available pertinent information. Golden Triangle shall immediately comply with the proposed emission limit. The EPA and MDNR will use the data collected and other available pertinent information to establish limits for PM and PM₁₀. The EPA and MDNR shall provide written notice to Golden Triangle of the established limit and the established limit shall be incorporated into and enforceable under this Consent Decree. If the limit established by the EPA and MDNR is more stringent than the limit proposed by Golden Triangle, then Golden Triangle shall have sixty (60) days from the date of written notice to comply with the established limit. If Golden Triangle contests the limit proposed by the EPA and MDNR, Golden Triangle shall have sixty (60) days to invoke the Dispute Resolution process pursuant to Part IX ("Dispute Resolution") and obtain a stay from the Court. Until a limit is established under the Dispute Resolution process herein, Golden Triangle shall comply with the emission limit it proposed under this Paragraph.

16. Source-wide Caps:

(a). Golden Triangle shall accept source-wide allowable emission caps equivalent to ninety-five (95) TPY for VOCs, PM, PM₁₀, SO₂, NO_x, and CO for a period of

twenty-four (24) months or until termination of this Consent Decree whichever is later.

Beginning no later than one hundred eighty (180) days following start-up of the last piece of control equipment required in their approved Control Technology Plan, Golden Triangle shall continually operate its facility so as not to exceed the source-wide allowable emission caps of ninety-five (95) TPY for each pollutant for VOCs, PM, PM₁₀, SO₂, NO_x, and CO based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven (11) months, beginning no later than one hundred eighty (180) days following start-up of the last piece of control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on a schedule to meet applicable emission caps as set forth in the approved Control Technology Plan.

(b). Beginning no later than one hundred eighty (180) days following start-up of the last piece of control equipment required in its approved Control Technology Plan, Golden Triangle shall continually operate the facility so as not to exceed the source-wide allowable emission caps of 9.0 TPY for any single HAP or 24.0 TPY for all HAPs based on a 12-month rolling sum, rolled monthly, and recorded monthly. For the first eleven (11) months, beginning no later than one hundred eighty (180) days following start-up of the last piece of control equipment required in the approved Control Technology Plan, compliance with the 12-month rolling sum will be demonstrated based on a schedule to meet applicable emission caps as set forth in the approved Control Technology Plan. This provision shall survive termination of this Consent Decree until the 9.0 TPY and 24.0 TPY emission caps are amended by or incorporated into a federally-enforceable permit for the facility.

D. DEMONSTRATION OF COMPLIANCE

17. Golden Triangle shall demonstrate continuous compliance with the emission limits established under this Consent Decree by the use of performance testing, parametric monitoring, recordkeeping and reporting, or initial and periodic compliance testing, as appropriate, as set forth in the approved Control Technology Plan. Until termination of the Consent Decree, Golden Triangle shall conduct: (1) annual performance tests on the DDGS dryer; and (2) performance tests on all other units in accordance with the frequency set forth in Attachment 2. All such tests shall be conducted using the methods set forth in Section 7.0 of the approved Control Technology Plan to demonstrate compliance with the emission limits therein unless this requirement is waived in writing by the EPA and MDNR.

18. By no later than one hundred eighty (180) days following the start-up of each piece of control equipment required in the approved Control Technology Plan, Golden Triangle shall demonstrate through an initial performance test that it has met the required destruction efficiency and/or emission limit of each emissions unit as specified in the approved Control Technology Plan. Units to be tested will include: the DDGS dryer; Fermentation Units (including Beer Well); Distillation Unit (Misc. Process Vent); Boiler; Cooling cyclone; and Ethanol Load Out Flare. This provision does not apply to the demonstration of compliance with applicable long term annual emissions cap (verified through rolling sums).

19. All performance testing protocols shall be submitted to MDNR and the EPA for review at least thirty (30) days prior to testing. The performance testing shall be conducted in accordance with test protocols approved by the EPA and MDNR. Within forty-five (45) days of the test date, test results shall be submitted to MDNR and the EPA.

20. Golden Triangle shall maintain control technology performance criteria monitoring data and records as set forth in the approved Control Technology Plan, and shall make these records and data available to the Plaintiffs upon demand as soon as practicable.

E. RECORDKEEPING AND REPORTING REQUIREMENTS

21. Beginning with the first full calendar quarter following lodging of this Consent Decree, Golden Triangle shall submit written reports within thirty (30) days following each calendar quarter to MDNR and the EPA that itemize Consent Decree requirements, the approved Control Technology Plan requirements, the applicable deadlines, the dates the tasks were completed, unit emissions data and data to support Golden Triangle's compliance status with the terms of this Consent Decree. Reports shall be sent to the addresses identified in Paragraph 55 ("Notice"). Emissions data may be submitted in electronic format.

22. Golden Triangle shall maintain records to demonstrate compliance with the Applicable NSPS Requirements, and its fugitive dust management program.

23. Golden Triangle shall maintain records to demonstrate compliance with the source-wide caps required under Paragraph 16, as well as any other records or requirements contained in any permits issued by MDNR.

24. Golden Triangle shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that support the reporting and compliance requirements under this Part for a period of three years following the termination of this Consent Decree, unless other regulations require the records to be maintained longer.

25. All notices, reports or any other submissions from Golden Triangle shall contain the following certification and may be signed by an owner or operator of the company responsible for environmental management and compliance:

“I certify under penalty of law that I have personally examined the information submitted herein and that I have made a diligent inquiry of those individuals immediately responsible for obtaining the information and that to the best of my knowledge and belief, the information submitted herewith is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

V. CIVIL PENALTY

26. Within thirty (30) calendar days of entry of this Consent Decree, the Defendant shall pay to the Plaintiffs a civil penalty pursuant to Section 113 of the Act, 42 U.S.C. § 7413, in the amount of \$30,000 (Thirty Thousand Dollars). Pursuant to the Act, the following factors were considered in determining a civil penalty, in addition to other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

27. Of the total penalty, \$15,000, shall be paid to the United States by Electronic Funds Transfer (“EFT”) to the United States Department of Justice (“DOJ”), in accordance with current EFT procedures, referencing the United States Attorney's Office (“USAO”) File Number and DOJ Case Number 90-5-2-1-08118, and the civil action case name and case number of the Western District of Missouri. The costs of such EFT shall be Golden Triangle's responsibility. Payment shall be made in accordance with instructions provided to Golden Triangle by the

Financial Litigation Unit of the USAO in the Western District of Missouri. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Golden Triangle shall provide notice of payment, referencing the USAO File Number and DOJ Case Number 90-5-2-1-08118, and the civil action case name and case number, to the Department of Justice and to the EPA, as provided in Paragraph 55 ("Notice"). The total remaining amount, \$15,000 in civil penalties, shall be paid to the Plaintiff-Intervenor the State of Missouri. Payment to the Plaintiff-Intervenor the State of Missouri shall be made in the form of a certified check payable to the "State of Missouri" (Holt County Treasurer), in the above amount and sent to: Jo Ann Horvath, Office of the Attorney General, P.O. Box 899, Jefferson City, MO 65102-0899.

28. The Defendant shall pay statutory interest on any over due civil penalty or stipulated penalty amount at the rate specified in 31 U.S.C. § 3717. Upon entry of this Consent Decree, this Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal and state authority. The Plaintiffs shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

29. No amount of the \$30,000 civil penalty to be paid by Golden Triangle shall be used to reduce its federal or state tax obligations.

VI. STIPULATED PENALTIES

30. The Defendant shall pay stipulated penalties in the amounts set forth below to the Plaintiffs, to be paid 50 percent to the United States and 50 percent to the Plaintiff-Intervenor, for the following:

(a). for each day of failure to propose VOC, PM, and PM₁₀ emission limits under Paragraphs 13 and 15:

1st through 30th day after deadline	\$ 250
31st through 60th day after deadline	\$500
Beyond the 60 th day	\$1000

(b). for each day of failure to meet the deadlines for installation of control technology systems set forth in the Control Technology Plan and applying for, or obtaining, permits under Paragraphs 6 and 7:

1st through 30th day after deadline	\$800
31st through 60th day after deadline	\$1,200
Beyond 60th day	\$2,000

(c). for failure to conduct a compliance test as required by Paragraph 18, per day per unit:

1st through 30th day after deadline	\$250
31st through 60th day after deadline	\$500
Beyond 60th day	\$1,000

(d). for failure to demonstrate compliance with emission limits set forth in the approved Control Technology Plan or emission limits set pursuant to Part IV Section C (“Emission Limits”): Five Thousand Dollars (\$5,000) per emissions test for each pollutant

(e). for each failure to submit reports or studies as required by Part IV Section E (“Recordkeeping and Reporting Requirements”) of this Consent Decree, per day per report or notice:

1st through 30th day after deadline	\$250
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31st through 60th day after deadline \$500

Beyond 60th day \$1,000

(f). for failure to pay or escrow stipulated penalties, as specified in Paragraphs 31 and 32 of this section, Five Hundred Dollars (\$500) per day per penalty demand.

(g). for failure to notify the Plaintiffs pursuant to Paragraph 2 of Golden Triangle's sale or transfer of the facility, Two Hundred Fifty Dollars (\$250) per day.

31. Golden Triangle shall pay stipulated penalties upon written demand by the Plaintiffs no later than thirty (30) days after Defendant receives such demand. Stipulated penalties shall be paid to the Plaintiffs in the manner set forth in Part V ("Civil Penalty") of this Consent Decree.

32. Should Golden Triangle dispute its obligation to pay part or all of a stipulated penalty, it may avoid the imposition of the stipulated penalty for failure to pay a penalty due to the Plaintiffs by placing the disputed amount demanded by the Plaintiffs, not to exceed Twenty Thousand Dollars (\$20,000) for any given event or related series of events, in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of Part IX within the time provided in Paragraph 31 for payment of stipulated penalties. If the dispute is thereafter resolved in Defendant's favor, the escrowed amount plus accrued interest shall be returned to the Defendant. Otherwise the Plaintiffs shall be entitled to the escrowed amount that was determined to be due by the Court plus the interest that has accrued on such amount, with the balance, if any, returned to the Defendant.

33. The Plaintiffs reserve the right to pursue any other remedies for violations of this Consent Decree to which they are entitled. The Plaintiffs will not seek both stipulated penalties and civil or administrative penalties for the same violation of the Consent Decree.

VII. RIGHT OF ENTRY

34. Any authorized representative of the EPA or MDNR, or an appropriate federal or state agency, including independent contractors, upon presentation of proper credentials and in compliance with the facility's safety requirements, shall have a right of entry upon the premises of Golden Triangle's plant identified herein at Paragraph 3(b) at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment, and inspecting and copying all records maintained by Defendant required by this Consent Decree. Nothing in this Consent Decree shall limit the authority of the EPA and MDNR to conduct tests and inspections under Section 114 of the Act, 42 U.S.C. § 7414, and or any other applicable federal or state law.

VIII. FORCE MAJEURE

35. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Defendant shall notify the Plaintiffs in writing as soon as practicable, but in any event within twenty (20) business days of when Defendant first knew of the event or should have known of the event by the exercise of due diligence. In this notice Defendant shall specifically reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Defendant to prevent or minimize the delay and the schedule by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize such delays.

36. Failure by Defendant to provide notice to Plaintiffs of an event which causes or may cause a delay or impediment to performance shall render this Part VIII voidable by the Plaintiffs as to the specific event for which the Defendant has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

37. The United States or MDNR shall notify the Defendant in writing regarding the Defendant's claim of a delay or impediment to performance as soon as practicable, but in any event within thirty (30) days of receipt of the Force Majeure notice provided under Paragraph 35. If the Plaintiffs agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. The Defendant shall not be liable for stipulated penalties for the period of any such delay.

38. If the Plaintiffs do not accept the Defendant's claim that a delay or impediment to performance is caused by a Force Majeure event, to avoid payment of stipulated penalties, the Defendant must submit the matter to this Court for resolution within twenty (20) business days after receiving notice of the Plaintiffs' position, by filing a petition for determination with this Court. Once the Defendant has submitted this matter to this Court, the Plaintiffs shall have twenty (20) business days to file its response to said petition. If the Defendant submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant,

including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances.

39. The Defendant shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled by it, and that the Defendant could not have prevented the delay by the exercise of due diligence. The Defendant shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

40. Unanticipated or increased costs or expenses associated with the performance of the Defendant's obligations under this Consent Decree shall not constitute circumstances beyond the control of the Defendant, or serve as a basis for an extension of time under this Part. However, failure of a permitting authority to issue a necessary permit in a timely fashion is an event of Force Majeure where the Defendant has taken all steps available to it to obtain the necessary permit including but not limited to:

- (a). submitting a timely and complete permit application;
- (b). responding to requests for additional information by the permitting authority in a timely fashion; and
- (c). prosecuting appeals of any disputed terms and conditions imposed by the permitting authority in an expeditious fashion.

41. As part of the resolution of any matter submitted to this Court under this Part VIII, the parties by agreement, or this Court, by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay or impediment to performance agreed to by the Plaintiffs or approved by this Court. Defendant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

IX. DISPUTE RESOLUTION

42. The dispute resolution procedure provided by this Part IX shall be available to resolve all disputes arising under this Consent Decree, including but not limited to emission limits established by the MDNR in Part IV Section C ("Emission Limits"), except as otherwise provided in Part VIII regarding Force Majeure.

43. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the parties to this Consent Decree to another advising of a dispute pursuant to this Part IX. The notice shall describe the nature of the dispute, and shall state the noticing party's position with regard to such dispute. The party receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

44. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting between

representatives of the Plaintiffs and the Defendant, unless the parties' representatives agree to shorten or extend this period.

45. In the event that the parties are unable to reach agreement during such informal negotiation period, the Plaintiffs shall provide the Defendant with a written summary of their position regarding the dispute. The position advanced by the Plaintiffs shall be considered binding unless, within forty-five (45) calendar days of the Defendant's receipt of the written summary of the Plaintiffs position, the Defendant files with this Court a petition which describes the nature of the dispute, and includes a statement of the Defendant's position and any supporting data, analysis, and/or documentation relied on by the Defendant. The Plaintiffs shall respond to the petition within forty-five (45) calendar days of filing.

46. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Part IX may be shortened upon motion of one of the parties to the dispute.

47. As part of the resolution of any dispute submitted to dispute resolution, the parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Defendant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

X. GENERAL PROVISIONS

48. Effect of Settlement. This Consent Decree is not a permit; compliance with its terms does not guarantee compliance with any applicable federal, state or local laws or regulations. To the extent that the terms of this Consent Decree conflict with the terms of any air

quality permit, the terms of this Consent Decree shall control during the effective period of the Consent Decree.

49. Resolution of Claims. Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of and shall resolve all past civil and administrative liability of the Defendant to the Plaintiffs for the violations alleged in the United States' and Plaintiff-Intervenor's Complaints and all civil and administrative liability of the Defendant for any violations at its facility based on facts and events that occurred during the relevant time period under the following statutory and regulatory provisions: (a) NSPS, 40 C.F.R. Part 60, including Subparts Dc, Kb, and VV; (b) PSD requirements at Part C of the Act and the regulations promulgated thereunder at 40 C.F.R. § 52.21, (c) national emission standards for hazardous air pollutants, 40 C.F.R. Part 63, pursuant to Sections 112(a) and 112(g) of the Act; and (d) the Missouri regulations which incorporate and/or implement the above-listed federal regulations in items (a), (b) and (c); including Missouri's New Source Performance Standards, 10 C.S.R. 10-6.070, and all air permit requirements and air emissions fee requirements under 10 C.S.R. 10-6.060. For purposes of this Consent Decree, the "relevant time period" shall mean the period beginning when the United States' claims and/or Plaintiff-Intervenor's claims under the above statutes and regulations accrued through the date of entry of this Consent Decree. During the effective period of the Consent Decree, certain emission units shall be on a compliance schedule and any modification to these units, as defined in the PSD Rules, which is not required by this Consent Decree, is beyond the scope of this resolution of claims. This provision shall survive the termination of the Consent Decree.

50. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Defendant of its obligation to comply with all applicable federal, state and local laws and regulations. Subject to Paragraph 49, nothing contained in this Consent Decree shall be construed to prevent or limit the United States' or MDNR's rights to obtain penalties or injunctive relief under the Act or other federal, state or local statutes or regulations, including but not limited to, Section 303 of the Act, 42 U.S.C. § 7603.

51. Third Parties. Except as otherwise provided by law, this Consent Decree does not limit, enlarge or affect the rights of any party to this Consent Decree as against any third parties. Nothing in this Consent Decree should be construed to create any rights, or grant any cause of action, to any person not a party to this Consent Decree.

52. Costs. Each party to this Consent Decree shall bear its own costs and attorneys' fees through the date of entry of this Consent Decree.

53. Public Documents. All information and documents submitted by the Defendant to the Plaintiffs pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential by the Defendant in accordance with 40 C.F.R. Part 2.

54. Public Comments - Federal Approval. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The United States reserves the right to withdraw or withhold consent if the comment regarding this Consent Decree discloses facts or considerations which indicate that this Consent

Decree is inappropriate, improper or inadequate. The Defendant and the Plaintiff-Intervenor consent to the entry of this Consent Decree.

55. Notice. Unless otherwise provided herein, notifications to or communications with the United States, EPA, MDNR or the Defendant shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested. Except as otherwise provided herein, when written notification to or communication with the United States, EPA, MDNR or the Defendant is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Thomas L. Sansonetti
Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611

As to the EPA:

Bill Peterson
EPA, Region 7
Air Permitting and Compliance Branch
901 North 5th Street
Kansas City, Kansas 66106

As to Golden Triangle:

Roger Hill
General Manager
Golden Triangle
15053 Highway 111
Craig, MO 64437

with a copy to:

Scott A. Young, Esq.
Polsinelli Shalton Welte Suelthaus PC
700 W. 47th Street, Suite 1000
Kansas City, MO 64112-1802

As to Plaintiff-Intervenor the State of Missouri, through the MDNR:

Steve Feeler, Chief of Enforcement
Air Pollution Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

56. Change of Notice Recipient. Any party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

57. Modification. There shall be no modification of this Consent Decree without written agreement of all the parties. There shall be no material modification of this Consent Decree without the written agreement of the parties and by Order of the Court. Prior to complete termination of the requirements of this Consent Decree pursuant to Paragraph 59, the parties may, upon motion to the Court, seek to terminate provisions of this Consent Decree.

58. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XI. TERMINATION

59. This Consent Decree shall be subject to termination upon motion by any party after the Defendant satisfies all requirements of this Consent Decree and has operated the control technologies identified in the approved Control Technology Plan in compliance with the emission limits, and have demonstrated for twenty-four (24) months that its actual emissions of VOCs, PM, PM₁₀, SO₂, NO_x and CO have remained under ninety-five (95) TPY. For purposes of meeting the twenty-four (24) month performance requirement in this Paragraph, Defendant may demonstrate that its actual emissions remained under the ninety-five (95) TPY allowable emission caps by either using the results of the initial compliance tests or evidence of operating conditions since the installation of the control equipment required in this Consent Decree and in the approved Control Technology Plan. At such time, if the Defendant believes that it is in compliance with the requirements of this Consent Decree, and has paid the civil penalty and any stipulated penalties required by this Consent Decree, then the Defendant shall so certify to the Plaintiffs, and unless the Plaintiffs object in writing with specific reasons within forty-five (45) days of receipt of the certification, the Court shall order that this Consent Decree be terminated on Defendant's motion. If the United States or MDNR objects to the Defendant's certification, then the matter shall be submitted to the Court for resolution under Part IX ("Dispute Resolution") of this Consent Decree. In such case, the Defendant shall bear the burden of proving that this Consent Decree should be terminated.

So entered in accordance with the foregoing this _____ day of _____, 2004.

**United States District Court Judge
Western District of Missouri**

THE UNDERSIGNED enter into this Consent Decree in the matter of
United States et al. v. Golden Triangle Energy

FOR PLAINTIFF, UNITED STATES OF AMERICA:

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, DC 20530

Date 3.25.05

Julie M. Van Horn
Special Department of Justice Appointment
Environmental and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, DC 20530

Date _____

THE UNDERSIGNED enter into this Consent Decree in the matter of
United States et al. v. Golden Triangle Energy

TODD P. GRAVES
UNITED STATES ATTORNEY
WESTERN DISTRICT OF MISSOURI

By Charles M. Thomas, Mo. #28522
Assistant United States Attorney
Western District of Missouri
Charles Evans Whittaker Courthouse
400 East 9th Street, Fifth Floor
Kansas City, Missouri 64106

THE UNDERSIGNED enter into this Consent Decree in the matter of
United States et al. v. Golden Triangle Energy

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date _____

Thomas V. Skinner
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date _____

James B. Gulliford
Regional Administrator
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

Date _____

Martha R. Steincamp
Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

THE UNDERSIGNED enter into this Consent Decree in the matter of
United States et al. v. Golden Triangle Energy

FOR THE PLAINTIFF-INTERVENOR, THE STATE OF MISSOURI:

MICHAEL D. WELLS
Acting Director
Air and Land Protection Division
Missouri Department of Natural Resources
Jefferson State Office Building, 12th Floor
205 Jefferson Street
P.O. Box 176
Jefferson City, Missouri 65102-0176

Date _____

TIMOTHY P. DUGGAN
Assistant Attorney General
Environmental Protection Division
Broadway State Office Building, 8th Floor
221 W. High Street
P.O. Box 899
Jefferson City, Missouri 65102-0899

Date _____

THE UNDERSIGNED enter into this Consent Decree in the matter of
United States et al. v. Golden Triangle Energy

FOR DEFENDANT, Golden Triangle:

Date _____

(Name), Title
Golden Triangle